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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/951,832	10/16/1997	CESAR Z. LINA	VAC.312B.US	2039

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LEGAL DEPARTMENT INTELLECTUAL PROPERTY
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EXAMINER

HAND, MELANIE JO

ART UNIT PAPER NUMBER

3761

DATE MAILED: 06/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

08/951,832

Applicant(s)

LINA ET AL.

Examiner

Melanie J. Hand

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 March 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 3-8, 13 and 16-25 is/are pending in the application.
- 4a) Of the above claim(s) 13 and 16-21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 3-8, 22 and 23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

Claims 13 and 16-21 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on March 14, 2006.

Priority

Acknowledgment is made of applicant's claim for priority as a continuation under copending Application No. 08/517,901 filed on August 22, 1995, now abandoned, which is a continuation-in-part of Application No. 08/293,894, filed August 22, 1994, now abandoned.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 3, 4, 8, 22 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Todd et al (U.S. Patent No. 5,437,651) in view of Martin (U.S. Patent No. 4,631,061).

With respect to **claim 8**: Todd teaches a medical suction apparatus comprising an open celled polyurethane foam pad (porous pad permeable to fluids) that is foldable so as to be capable of being placed in various areas of the body between tissues (e.g. a sealable space defined in part by a wound surface). ('651, Col. 4, lines 37-39, 63-65) Tubing 20 connecting pad 12 to a suction source has a first end threaded through orifice 18 of pad backing 16 that is in fluid communication with pad 12 (Figs. 5,6). A receptacle (not shown) is attached to the apparatus 10

to collect fluid from the body through said tubing 20. Foam pad 12 with backing 16 is attachable to a suction source 14 via tubing 20 therefore the second end of tubing 20 is attached to the suction source, which in turn is operatively attached to said receptacle. Therefore said receptacle is in fluid communication with a second end of tubing 20 that is opposite the first end. Todd teaches that the apparatus is adaptable to receive a pump as a means for supplying intermittent suction to the apparatus connected thereto and operated manually or automatically for periodic drainage. ('651, Col. 7, lines 26-30) Since the pump is a suction source, it is thus fluidically connected to said receptacle. Pad backing 16 (elastomeric film dressing) is attached to pad 12 and serves to secure the foam pad 12 in a sealable space by such attachment. Since the entirety of the pad 12 is attached to backing 16, there exists adhesive in the peripheral areas of backing 16. Since backing 16 also provides support for pad 12 when performing the act of placing said pad at a wound site, which involves pressing and folding said pad, the adhesive would necessarily have to be a pressure-sensitive adhesive.

Todd does not teach at least one bacterial filter interposed between said receptacle and said pump. Martin teaches a portable urine collection and storage device comprising a collection vessel 22 for collecting urine from a user's body, a tube 24 connecting said receptacle to a urine tank 32 and a filter 50 disposed between said tank and pump 43. ('061, Col. 2, lines 65-68, Col. 3, lines 1-6, 65-68) Martin teaches that filter 50 prevents urine odor from escaping. Since bacteria are larger than substantially all molecules of compounds which cause odor, filter 50 is fully capable of functioning as a bacterial filter. Martin teaches that the filter in this position has the dual function of preventing urine odor from escaping said urine tank and reducing pump noise, therefore it would be obvious to one of ordinary skill in the art to modify the device taught by Todd so as to contain a bacterial filter between said receptacle and said suction source to

which it is fluidically connected so as to prevent odor and bacteria from escaping from or entering the receptacle as taught by Martin.

With respect to **claim 3**: Todd teaches that the receptacle is fluidically connected to said pump, said receptacle is attached to the housing for said suction source ('651, Col. 4, lines 46-48) and is thus also removably attached.

With respect to **claim 4**: Todd does not teach that said receptacle is removably received in a recess in the housing of said pump. Martin teaches housing 20 that encloses pump 43 and urine tank 32, which defines a space (recess) having a volume. Since they are connected via tubing only, urine tank 32 is removably received in housing 20 and is thus also removably received in the recess it occupies.

With respect to **claims 22,23**: Todd teaches an open-celled polyurethane foam, i.e. having at least 95% interconnecting cells forming a network (reticulated), wherein polyurethane is produced from a polyol (polyether) and a diisocyanate.

Claims 5-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Todd et al ('651) in view of Martin ('061) as applied to claims 3,4,8,22 and 23 above, and further in view of Poirier et al (U.S. Patent No. 4,886,502).

With respect to **claim 5**: Neither Todd nor Martin teaches tubing fitted as an interference fit with said orifice into an interior portion of said pad. Poirier teaches a peritoneal access device comprising a porous polyurethane filament (polymer foam having interconnecting cells ('502,

Col. 4, lines 14-18)) peritoneal collar 84 into which the peritoneum 87 and adjacent tissue can grow. Collar 84 is positioned by sliding said collar onto tube 82 wherein the inner diameter of collar 84 is smaller than the outer diameter of tube 82 so as to form an interference fit. Poirier teaches that this interference fit provides a stable seal as well as sufficient friction to prevent the collar from moving once it is properly positioned by a surgeon ('502, Col. 4, lines 5-35), therefore it would be obvious to one of ordinary skill in the art to modify the pad orifice taught by the combined teaching of Todd and Martin so as to have an inner diameter that is smaller than the outer diameter of tubing 20 as taught by Poirier to form an effective seal and secure said pad at the desired wound site.

With respect to **claim 7**: Todd teaches an open-celled polyurethane foam, i.e. having at least 95% interconnecting cells forming a network (reticulated), wherein polyurethane is produced from a polyol (polyether) and a diisocyanate.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melanie J. Hand whose telephone number is 571-272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Melanie J Hand
Examiner
Art Unit 3761

MJH

TATYANA ZALUKAEVA
SUPERVISORY RESPONSIBILITY EXAMINER
